

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

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JOHN SELF,

PLAINTIFF,

VS.

H.B. PAULK WHOLESALE  
GROCERS, INC., et al.,

DEFENDANTS.

CASE NUMBER: 2:06CV935-1D

**DEFENDANTS' MOTION TO STRIKE PRAYERS FOR  
COMPENSATORY AND PUNITIVE DAMAGES**

Come now the Defendants, by and through counsel, and, pursuant to Rule 7 of the Federal Rules of Civil Procedure, hereby move this Court for an Order striking Plaintiff's various prayers for compensatory and punitive damages and such relief is not permitted by the Employee Retirement Income Security Act. In support of this request, the Defendants say the following:

1. The claims filed by Plaintiff in this action should be (if properly pleaded) exclusively based upon the provisions of the Employee Retirement Income Security Act ("ERISA"). Plaintiff alleges that he was provided with health benefit coverage which Plaintiff had as a result of Plaintiff's employment with Defendant H.P. Paulk Wholesale Grocers, Inc. (Plaintiff's Complaint, para 11, 12). Plaintiff further alleges that certain unspecified medical claims were not paid as a result of an injury incurred by him on April 29, 2006. (Plaintiff's Complaint, para 13).

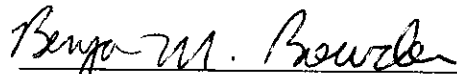
2. As to each of the various state law claims pleaded by Plaintiff (which are preempted by ERISA), Plaintiff has asked for an award of punitive and compensatory damages. This Court can strike all those prayers in their entirety for the reasons set forth below. Plaintiff simply

cannot be found to be entitled to an award of such damages under the applicable provisions of ERISA.

3. It is well established that compensatory, exemplary and/or punitive damages are not available under ERISA. See, Mertens v. Hewitt Associates, 508 U.S. 248 (1993); Godfrey v. BellSouth Telecommunications, 89 F.3d 755 (11<sup>th</sup> Cir. 1996); McRae v. Seafarers' Welfare Plan, 920 F.2d 819 (11<sup>th</sup> Cir.), rehearing denied, 931 F.2d 911 (11<sup>th</sup> Cir. 1991). Permitting Plaintiff's prayers for compensatory and punitive damages to remain in this case are incompatible with ERISA's statutory enforcement schemes. Therefore, Plaintiff's various prayers for compensatory and punitive damages must now be stricken.

WHEREFORE, for the reasons stated herein, Defendants respectfully request that their Motion to Strike Plaintiff's Prayers for Compensatory and Punitive Damages be granted.

Respectfully submitted,

  
Benjamin M. Bowden (BOW035)  
Attorney for Defendants

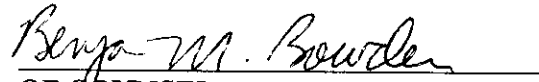
OF COUNSEL:

ALBRITTONS, CLIFTON, ALVERSON,  
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334-222-3177

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing upon all counsel of record in this cause by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 13<sup>th</sup> day of October, 2006:

A. Riley Powell, IV  
The Powell Law Firm  
Post Office Box 969  
Andalusia, Alabama 36420

  
OF COUNSEL